

1 Gerald Armstrong  
715 Sir Francis Drake Boulevard  
2 San Anselmo, CA 94960  
(415)456-8450  
3 In Propria Persona  
4

ORIGINAL FILED  
ORDER FOR RELIEF

95OCT-3 PM 3:57

KEENAN G. CASADY, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DIST. OF CA.  
SANTA ROSA, CA.

5 UNITED STATES BANKRUPTCY COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
7

8		)	Case No. 95-10911 aj
9	In re	)	
10	GERALD ARMSTRONG,	)	Chapter 7
11	Debtor	)	Adv. No. 95-1164
12		)	GERALD ARMSTRONG'S
13	CHURCH OF SCIENTOLOGY	)	OPPOSITION TO
14	INTERNATIONAL, a California non-	)	SCIENTOLOGY'S
15	profit religious corporation,	)	MOTION FOR
16	Plaintiff,	)	PROTECTIVE ORDER
17	v.	)	
18	GERALD ARMSTRONG,	)	
19	Defendant.	)	DATE: October 13, 1995
20		)	TIME: 11:00 a.m.
21		)	CTRM: Hone. Alan Jaroslavsky

22 I, Gerald Armstrong, declare:

23 1. I have personal knowledge of the facts set forth in  
24 this declaration and could competently testify thereto if called  
25 as a witness.

26 2. Scientology states in its motion for a protective order  
27 that when attorney Laurie Bartilson spoke to me on September 18,  
28 about withdrawing my document request until after the meet and  
confer I refused. (Memorandum of Points and Authorities, 3:15-  
19) I did not refuse at all. I offered to meet and confer at  
that time, and Ms. Bartilson refused, claiming that she could not



1 meet and confer until October 23-25 and 30. She said that she  
2 would not meet and confer until after the Court's hearing on  
3 Scientology's motion to strike my answer. I was and am  
4 completely willing to meet and confer and work out a discovery  
5 plan and schedule as soon as possible, and to extend the time for  
6 Scientology's response to my document request to fit with such  
7 schedule.

8       3. Ms. Bartilson states in her declaration that "[I] did  
9 not contact [her] office again, nor did [I] contact [her] co-  
10 counsel, Mr. Wilson." (Bartilson declaration, 2:23,24) This is  
11 untrue. During our September 18 conversation, Ms. Bartilson  
12 asked me to call Mr. Wilson on September 19, as she was not going  
13 to be available. I did contact Mr. Wilson's office on September  
14 19 and left a message for him on his voice mail. I also  
15 contacted his office on September 20 and left a message for him  
16 with a secretary. Mr. Wilson did not return my calls.

17       4. In the case which resulted in the summary adjudication  
18 ruling against me, which Scientology claims gives it \$100,000 in  
19 liquidated damages (LASC No. BC 052395, now Marin SC No. 157680,  
20 the "state case"), Scientology produced not one document to me  
21 throughout that litigation, from February 1992 to this date.  
22 Undoubtedly my attorneys in that case could have been more  
23 effective, but the real reason for the complete absence of  
24 discovery was Scientology's delaying tactics and refusal to play  
25 fair. I have an intense history with Scientology since 1969. It  
26 has attacked me pursuant to its "fair game" policy since 1982.  
27 It has sued me five times, had me surveilled, illegally  
28 videotaped, wiretapped, assaulted, and stalked. It has tried six  
times to have me jailed on its false charges. It attacks my



1 religion and my friends. Yet it produced not one document in its  
2 lawsuit against me in which it was claiming millions in damages.

3 5. Appended hereto as Exhibit A is a true and correct copy  
4 of a declaration executed by US District Judge James M. Ideman  
5 June 17, 1993 and filed in the cases of Scientology v. Scott, US  
6 District Court for the Central District of California, case no.  
7 CV 85-711 JMI (Bx) and Scientology v. Wollersheim, No. CV 85-7197  
8 JMI (Bx). I saw this declaration as part of my work in the  
9 office of attorney Ford Greene, and I personally obtained a  
10 certified copy of this declaration from the 9th Circuit Court of  
11 Appeal. Judge Ideman lays out Scientology's litigation strategy  
12 regarding discovery:

13 "The past 8 years have consisted mainly of a prolonged,  
14 and ultimately unsuccessful, attempt to persuade or  
15 compel the plaintiff to comply with lawful discovery.  
16 These efforts have been fiercely resisted by  
17 plaintiffs. They have utilized every device that we on  
18 the District Court have ever heard of to avoid such  
19 compliance, and some that are new to us.

20 "This noncompliance has consisted of evasions,  
21 misrepresentations, broken promises and lies, but  
22 ultimately with refusal. As part of this scheme to not  
23 comply, the plaintiffs have undertaken a massive  
24 campaign of filing every conceivable motion (and some  
25 inconceivable) to disguise the true issue in these  
26 pretrial proceedings. Apparently viewing litigation as  
27 war, plaintiffs by this tactic have had the effect of  
28 massively increasing the costs to the other parties,  
and for a while, to the Court. The appointment of a



1 Special Master 4 years ago has considerably relieved  
2 the burden to this Court. The scope of plaintiff's  
3 efforts have to be seen to be believed. (See, Exhibit  
4 "A," photo of clerk with filings, and Exhibit "B", copy  
5 of clerk's docket with 81 pages and 1,737 filings.)  
6 "Yet it is almost all puffery -- motions without merit  
7 or substance." (Ex. A, 1:23-2:20)

8 Judge Ideman also states that he is recusing himself because of  
9 Scientology's harassment of his former law clerk. (Ex. A, 1:4-8).  
10 Laurie Bartilson's law firm represents plaintiff Scientology  
11 organization in the cases over which Judge Ideman presided.

12 6. Appended hereto as Exhibit B is a true and correct copy  
13 of certain pages from the decision after trial of the first case  
14 in which Scientology sued me, LASC No. C 420153. Judge Paul G.  
15 Breckenridge who presided, stated:

16 "In January of 1980 there was an announcement [at the  
17 Gilman Hotsprings, California Scientology base] of a  
18 possible raid to be made by the FBI or other law  
19 enforcement agencies of the property. Everyone on the  
20 property was required by Hubbard's representatives, the  
21 Commodore's Messengers, to go through all documents  
22 located on the property and "vet" or destroy anything  
23 which showed that Hubbard controlled Scientology  
24 organizations, retained financial control, or was  
25 issuing orders to people at Gilman Hotsprings.

26 "A commercial paper shredder was rented and operated  
27 day and night for two weeks to destroy hundreds of  
28 thousands of pages of documents." (Ex. B. Appendix,  
2:1-11)



1 The Breckenridge decision was affirmed and the shredding  
2 operation discussed by the California Court of Appeal  
3 (Scientology v. Armstrong, (1991) 232 Cal.App.3d 1060, 283  
4 Cal.Rptr.917, at 918, 919.

5 7. I am providing the two quotes by the two judges to let  
6 the Bankruptcy Court know the conditions in which I served my  
7 request for production to Scientology. This organization has a  
8 policy and practice regarding discovery of evasions,  
9 misrepresentations, broken promises, lies, refusal and  
10 destruction of evidence. This is Scientology's policy and  
11 practice in litigation with parties represented by multiple  
12 lawyers. What chance does a pro per litigant without time or  
13 finances have of obtaining essential discovery from this  
14 organization? That is why I served my document request as early  
15 in this case as possible; and it is why I request this Court's  
16 assistance to make sure that Scientology does produce the  
17 documents I need for my defense.

18 8. Scientology claims that "None of the requests [in my  
19 document production request] are relevant to this proceeding: an  
20 adversary petition in which the creditor seeks to prevent [my]  
21 discharge in bankruptcy due to fraud, and misrepresentations on  
22 [my] bankruptcy petition." (Memorandum of Points and Authorities  
23 at 2:6-9) This is untrue. In its third claim for relief  
24 Scientology alleges that "[my] conduct at the time that [I]  
25 entered into the Agreement with CSI constitutes false pretenses  
26 and/or false representations, which [I] knew to be false and/or  
27 which [I] made with reckless disregard as to their truth or  
28 falsity." (Complaint, 10:18-22) Scientology also states that  
had it "known that [I] did not intend to abide by the non-



1 disclosure provisions contained in the Agreement, [it] would not  
2 have entered into the Agreement with [me] and would not have paid  
3 [me] \$800,000." (Complaint, 10:14-17) Although this is untrue,  
4 since Scientology did not know what I was being paid to dismiss  
5 my lawsuit against it (my attorney Michael Flynn was paid a lump  
6 for all the cases he was settling at the time, and the amount  
7 each client was receiving was confidential between Flynn and the  
8 clients) it points out that the circumstances prior to and at the  
9 time of the "settlement" are relevant in this case, and documents  
10 concerning these periods are also relevant.

11 9. In its fourth claim for relief Scientology alleges that  
12 "[I have] deliberately and repeatedly violated [my] Agreement not  
13 to discuss [my] claimed Scientology knowledge and experiences,  
14 and [I have] done so with the intent and purpose of impeding,  
15 injuring and destroying CSI and the Scientology faith." Not only  
16 is Scientology seeking to litigate the same issues it is even now  
17 litigating in the state case, it raises issues to which I have a  
18 defense of justification. Long before I said anything following  
19 the 1986 "settlement" Scientology attacked me pursuant to its  
20 "fair game" doctrine. It has subjected me to a massive  
21 international campaign of character assassination (which it calls  
22 "black propaganda"), litigation and stalking. My document  
23 requests concerning its intelligence operations against me, black  
24 propaganda, and stalking were made relevant not only by my  
25 answer, which Scientology finds so offensive, but by its attacks  
26 in its complaint. I would never have said anything further about  
27 Scientology if it had not continued to abuse me and subject me  
28 and other innocent people to its cruel "fair game" doctrine. I  
had devoted more than twelve years of my life to L. Ron Hubbard



1 and his organization. I was affectionately referred to by many  
2 Sea Organization members as "the General" for leading them  
3 successfully through a long and oppressive campaign inside. I  
4 have many memories of wonderful experiences during my Scientology  
5 years and many friends among Scientologists. I sought after the  
6 "end" of the litigation to get on with my life and leave  
7 Scientology alone.

8 10. Scientology claims to be a religion organized for  
9 strictly religious purposes. Scientology's offered corporate  
10 deponent in the state case, Lynn Farny, asserted that the work of  
11 CSI's some fifty paralegals who are assigned to its litigations  
12 including mine are involved in "ecclesiastical" duties. All of  
13 my experiences in Scientology were by Scientology's definitions  
14 "religious." All of my experiences are also by God's definitions  
15 religious. By this country's Constitution and the Religious  
16 Freedom Restoration Act of 1993, I cannot be forced by  
17 Scientology or any court to suppress my religious expressions,  
18 unless such expressions are unsafe, illegal or against public  
19 policy. My religious expressions are not unsafe, illegal or  
20 against public policy, but simply involve speaking and writing  
21 the truth. I cannot help being a Christian, nor am I responsible  
22 for Scientology being anti-Christian in theology and practice. I  
23 cannot be silenced about such a threat to my religion. It should  
24 be remembered that this case has been brought by Scientology.  
25 Thus its anti-Christian policies and practices and its "theology"  
26 are relevant as are its documents reflecting such policies,  
27 practices and "theology."

28 11. Appended hereto as Exhibit C is a true and correct copy  
of the decision of US Senior District Court Judge John L. Kane in



1 his published opinion of September 15, 1995 in the case of  
2 Scientology v. FACTNet, US District Court for the District of  
3 Colorado, No. 95-B-2143. In this case, Scientology obtained an  
4 authorization from another judge in the District Court to raid  
5 FACTNet, an electronic library service containing documents  
6 critical of Scientology's practices and "theology." In ordering  
7 the return of everything taken in its raid, Judge Kane stated,

8 "[Scientology] effectively requests that I advance its  
9 religion at the expense of Defendants' lawful rights to  
10 use the materials for the purposes of criticism and  
11 research. The United States Constitution, common law  
12 and the Copyright Act prevent me from doing so." (Ex.  
13 C, at p. 17)

14 By seeking to judicially silence me about its "religion" and my  
15 "religious experiences," while asserting that and acting as if it  
16 is free to say or write whatever it wants about me, Scientology  
17 is seeking in my case the same end: to advance its "religion" at  
18 the expense of my lawful rights. The Establishment clause of the  
19 US Constitution prohibits Scientology from using the Courts to  
20 advance its religion. Thus I have a religious defense, and a  
21 legitimate need for Scientology's documents relating to its  
22 policies and practices against perceived critics or "enemies,"  
23 and its "religious" policies and practices.

24 12. There are two reasons why my document request is long  
25 and detailed. First, my history with Scientology is long and  
26 detailed, both inside, where I was for 12 1/2 years, and outside  
27 as "fair game," which I have been for almost 14 years. Second,  
28 there is a need with Scientology to cover all bases and plug all  
loopholes; otherwise this organization will, as Judge Ideman



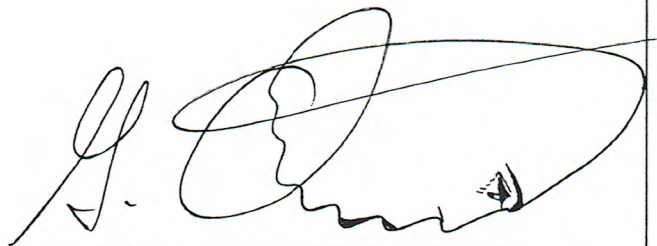
1 pointed out, evade, delay and refuse.

2 13. I am willing to meet and confer at any time with  
3 Scientology's lawyers. I am willing to work out a discovery plan  
4 and schedule. I am willing to allow Scientology to respond to my  
5 document request after we meet and confer and according to the  
6 discovery plan. I am willing to be reasonable in my demands for  
7 documents and other discovery. I am willing to resolve all of  
8 Scientology's cases and conflicts against me outside of court or  
9 in court. I am unwilling to continue to be "fair game" and to be  
10 used as a tool of "fair game." Scientology's motion for a  
11 protective order and sanctions, when I was ready and willing to  
12 meet and confer and work out a plan, and when it has already  
13 driven me into bankruptcy is just more "fair game."

14 14. I request that the Court not punish me for attempting  
15 to litigate this lawsuit in an effective manner, but assist with  
16 its powers to make sure that needed discovery is provided.

17 I declare under the penalty of perjury under the laws of the  
18 State of California that the foregoing is true and correct.

19 Executed at San Anselmo, California, on October 3, 1995.

20  
21  
22  
23  
24 

25 Gerald Armstrong  
26  
27  
28



1  
2  
3  
4  
5 PROOF OF SERVICE  
6

7 I am employed in the County of Marin, State of California. I  
8 am over the age of eighteen years and am not a party to the above  
9 entitled action. My business address is 715 Sir Francis Drake  
10 Boulevard, San Anselmo, California. I served the following  
11 documents:

12 **GERALD ARMSTRONG'S OPPOSITION TO SCIENTOLOGY'S MOTION  
13 FOR PROTECTIVE ORDER**

14 on the following person(s) on the date set forth below, by  
15 placing a true copy thereof enclosed in a sealed envelope with  
16 postage thereon fully prepaid to be placed in the United States  
17 Mail at San Anselmo, California:

18 ANDREW H. WILSON, ESQ.  
19 Wilson, Ryan & Campilongo  
115 Sansome Street, 4th Floor  
20 San Francisco, CA 94104

LAURIE J. BARTILSON, ESQ.  
Moxon & Bartilson  
6255 Sunset Boulevard  
Suite 2000  
Los Angeles, CA 90028

21  
22 [x](By Mail)I caused such envelope with postage thereon fully  
23 prepaid to be placed in the United States Mail at San Anselmo,  
California.

24 [x](State)I declare under penalty of perjury under the laws of  
the State of California that the above is true and correct.

25 DATED: October 3, 1995  
26  
27  
28

*Lorien "Abbey" Phippens*



1 ORIGINAL

2 DECLARATION OF HON. JAMES M. IDEMAN

RECEIVED  
CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

JUN 21 1993

3 DOCKETED

FILED 6/24/93  
DOCKETED 6/25/93  
DATE INITIAL

4 I, James M. Ideman, declare as follows:

5 1. Portions of this petition will become moot because  
6 I have decided to recuse myself from this case. Plaintiff has  
7 recently begun to harass my former law clerk who assisted me  
8 on this case, even though she now lives in another city and  
9 has other legal employment. This action, in combination with  
10 other misconduct by counsel over the years has caused me to  
11 reassess my state of mind with respect to the propriety of my  
12 continuing to preside over the matter. I have concluded that  
13 I should not. I have delayed the effective date of my  
14 recusal, however, so that I could respond on behalf of my  
15 court to the allegations in the petition.

16 2. I should say at the outset that this case should  
17 soon be concluded in the District Court and thus available for  
18 appellate review. I am confident that such a review will  
19 reveal that the plaintiff's claims raised in this petition are  
20 groundless. I would strongly recommend that any definitive  
21 appellate action be deferred pending a thorough review on  
22 appeal and that years of work not be wiped out by granting  
23 petitioner's extraordinary writ.

24 3. The past 8 years have consisted mainly of a  
25 prolonged, and ultimately unsuccessful, attempt to persuade or  
26 compel the plaintiff to comply with lawful discovery. These  
27 efforts have been fiercely resisted by plaintiffs. They have

28 ATTEST

29 CATHY A. CATTERSON  
Clerk of Court

30 by: James M. Ideman Esq.  
District Clerk



1 utilized every device that we on the District Court have ever  
2 heard of to avoid such compliance, and some that are new to  
3 us.

4 4. This noncompliance has consisted of evasions,  
5 misrepresentations, broken promises and lies, but ultimately  
6 with refusal. As part of this scheme to not comply, the  
7 plaintiffs have undertaken a massive campaign of filing every  
8 conceivable motion (and some inconceivable) to disguise the  
9 true issue in these pretrial proceedings. Apparently viewing  
10 litigation as war, plaintiffs by this tactic have had the  
11 effect of massively increasing the costs to the other parties,  
12 and, for a while, to the Court. The appointment of the  
13 Special Master 4 years ago has considerably relieved the  
14 burden to this Court. The scope of plaintiff's efforts have  
15 to be seen to be believed. (See, Exhibit "A", photo of clerk  
16 with filings, and Exhibit "B", copy of clerk's docket with 8/  
17 pages and 1,737 filings.)

18 5. Yet, it is almost all puffery -- motions without  
19 merit or substance. Notwithstanding this, I have carefully  
20 monitored the Special Master's handling of these motions. I  
21 saw no need to try to improve on the Special Master's writings  
22 if I agreed with the reasons and the results. However, with  
23 respect to the major ruling that I have made during these  
24 proceedings, the dismissal of the plaintiff's claims, the  
25 following occurred:  
26  
27  
28



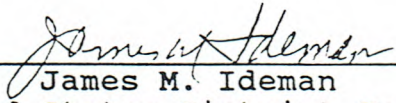
1           6.    The Special Master, after years of efforts to compel  
2 compliance with discovery, purported to order a dismissal of  
3 plaintiff's claims. Although the action was probably long  
4 overdue, the Special Master did not have the authority to make  
5 such a dispositive order. In reviewing his order, as I did  
6 with all of his actions, I saw what he had done and did not  
7 approve it. I treated the Special Master's "order" as a  
8 recommendation and gave notice to the parties that they could  
9 have a hearing and invited briefs. Only after considering  
10 fully the briefs of the parties did I give approval to the  
11 dismissal. It is true that I adopted the language chosen by  
12 the Special Master, but that was because I fully agreed with  
13 his reasoning and saw no need to write further.

14           7.    Plaintiffs are unhappy with Judge Kolts and me for  
15 insisting that they comply fully with discovery or forfeit  
16 their case. For this reason they wish to have our work set  
17 aside and begin anew with another judge who may, they hope,  
18 permit them to litigate their claims without complying with  
19 discovery, or, perhaps, to further punish the other parties  
20 with more years of expensive litigation. This they should not  
21 be permitted to do, especially by means of the limited review  
22 possible on an extraordinary writ.

23           8.    I respectfully recommend that the petitioner's  
24 claims that are not mooted by my withdrawal from the case be  
25 denied without prejudice to review of same upon appeal.  
26  
27  
28



1 I declare under penalty of perjury that the foregoing is  
2 true and correct. Executed this 17th day of June, 1993 at Los  
3 Angeles, California.  
4

5   
6 \_\_\_\_\_  
7 James M. Ideman  
8 United States District Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



Exhibit "A"







FILED

JUN 22 1984  
John L. Cortese,

*Rosie M. Hart*  
BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff,

vs.

GERALD ARMSTRONG,

Defendant.

MARY SUE HUBBARD,

Intervenor.

No. C 420153

MEMORANDUM OF  
INTENDED DECISION

In this matter heretofore taken under submission, the  
Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff  
in intervention are to take nothing, and defendant is entitled  
to Judgment and costs.

As to the equitable actions, the court finds that neither  
plaintiff has clean hands, and that at least as of this time,  
are not entitled to the immediate return of any document or  
objects presently retained by the court clerk. All exhibits



1 In January of 1980 there was an announcement of a possible  
2 raid to be made by the FBI or other law enforcement agencies of  
3 the property. Everyone on the property was required by  
4 Hubbard's representatives, the Commodore's Messengers, to go  
5 through all documents located on the property and "vet" or  
6 destroy anything which showed that Hubbard controlled  
7 Scientology organizations, retained financial control, or was  
8 issuing orders to people at Gilman Hot Springs.

9 A commercial paper shredder was rented and operated day  
10 and night for two weeks to destroy hundreds of thousands of  
11 pages of documents.

12 During the period of shredding, Brenda Black, the  
13 individual responsible for storage of Hubbard's personal  
14 belongings at Gilman Hot Springs, came to Defendant Armstrong  
15 with a box of documents and asked whether they were to be  
16 shredded. Defendant Armstrong reviewed the documents and found  
17 that they consisted of a wide variety of documents including  
18 Hubbard's personal papers, diaries, and other writings from a  
19 time before he started Dianetics in 1950, together with  
20 documents belonging to third persons which had apparently been  
21 stolen by Hubbard or his agents. Defendant Armstrong took the  
22 documents from Ms. Black and placed them in a safe location on  
23 the property. He then searched for and located another twenty  
24 or more boxes containing similar materials, which were poorly  
25 maintained.

26 On January 8, 1980, Defendant Armstrong wrote a petition  
27 to Hubbard requesting his permission to perform the research  
28 for a biography to be done about his life. The petition states







PUBLISH P. 2

UNITED STATES DISTRICT COURT  
DENVER, COLORADO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

SEP 15 1995

Civil Action No. 95-B-2143

JAMES R. MANSPEAKER  
CLERK

RELIGIOUS TECHNOLOGY CENTER, a California non-profit corporation, <sup>BY</sup> ~~corporation~~

Plaintiff,

v.

F.A.C.T.NET, INC., a Colorado corporation: LAWRENCE WOLLERSHEIM,  
an individual; and ROBERT PENNY, an individual,

Defendant.

---

MEMORANDUM OPINION AND ORDER

---

KANE, J.

On August 21, 1995 Religious Technology Center ("RTC"), a California non-profit corporation, filed a verified complaint against Lawrence Wollersheim, Robert Penny and F.A.C.T.NET, Inc. ("FACTNET") for injunctive relief and damages for copyright infringement (17 U.S.C. § 501) and trade secrets misappropriation (Colo. Rev. Stat. § 7-74-102 to -110 (1986)).

Jurisdiction is based on 28 U.S.C. §§ 1331 and 1338(a) and (b) in that this is an action for copyright infringement under 17 U.S.C. § 501. Supplemental jurisdiction exists under 28 U.S.C. § 1367 over the trade secrets misappropriation claim, which RTC alleges arises out of the same transaction and occurrences.

Before me is RTC's motion for preliminary injunction.

I. Background.

RTC is one of the formal entities constituting the Church of Scientology (the "Church") founded by L. Ron Hubbard. FACTNET is a non-profit educational and charitable corporation registered and



with its principle place of business in Colorado. Wollersheim and Penny are former Scientologists.<sup>1</sup> Wollersheim serves as President of the Board and Executive Director of FACTNET and Penny is a member of the FACTNET Board.

Defendants, operating on minimal financial resources, maintain a library and archive information concerning, inter alia, an ongoing public controversy regarding the Church's status as a religious tax exempt organization and charges that its practices involve harmful psychological coercion which has resulted in mental and physical harm to a significant number of its adherents.

Much of the information maintained by Defendants is made available publicly on FACTNET's Bulletin Board Service on the international computer network known as the Internet.<sup>2</sup> Other data is stored in a private portion of the FACTNET library which includes information concerning and provided by former Scientologists and their families.

RTC alleges Defendants have placed on the Internet unauthorized copies of unpublished religious works called OT materials, often referred to as "Advanced Technology." They list

---

<sup>1</sup> The Church of Scientology and Wollersheim have opposed each other in litigation in various cases. In Wollersheim v. Church of Scientology, 15 Cal. App. 4th 1476 (Cal. Ct. App. 1992), an action in which Wollersheim alleged intentional and negligent infliction of emotional injury, the court affirmed its prior judgment in his favor as to the cause of action for intentional infliction with the exception of the \$30 million damage award which it reduced to \$500,000 for compensatory damage and \$2 million for punitive damages. A final judgment which the evidence discloses remains unpaid.

<sup>2</sup> A bulletin board service ("BBS") usually requires users to dial in through telephone lines to access specialized information or services.



the materials in issue ("the Works") in Exhibit "A" to the complaint.

RTC maintains it has the exclusive license to the Works. It asserts the materials consist of unpublished works of L. Ron Hubbard, the founder of the Church of Scientology. The Church only permits access to each of the works to members who have attained the proper level of spiritual enlightenment and made the requisite financial contributions. Such access is through a highly controlled system known as "auditing" involving supervision by a senior member of the Church. RTC claims the Works are available at only seven sites around the world and are never removed from these locations.

Defendants maintain any of the Works in its possession were obtained lawfully and are maintained in the non-public section of Defendants' library. Wollersheim has provided consulting services to lawyers representing clients in litigation involving the Church but denied making copies of the Works for this purpose. Defendants assert they have not posted any of the Works to the Internet for public availability and that it is their policy not to do so.

According to Wollersheim, the only deviation from this policy was between August 1 and August 3, 1995, when, due to miscommunication, Arnold P. Lerma, a FACTNET director posted some of the Works to the Internet. The portions of the Works published by Lerma had been part of an unsealed public court record in the Central District of California in Church of Scientology



International v. Fishman, No. CV 91-6426 HLH (Tx) C.D. Cal.<sup>3</sup> These materials were attached to an affidavit filed by Fishman in that case. Wollersheim testified he received a copy of the affidavit from Fishman's counsel in the course of the consulting services Wollersheim provided in that case.

On August 15, 1995, Defendants posted a message to a newsgroup on the Internet claiming Lerma had acted on their behalf and with their endorsement and that they stood behind his actions.

## II. Procedural History.

On August 21, 1995, Judge Babcock, ruling on ex parte motions, granted a temporary restraining order against Defendants. His order restrained Defendants from the unauthorized copying, use or reproduction of the Works identified in Exhibit "A" to the complaint or any other part of the works that are part of the Advanced Technology, in particular the copying into "any computer data base, information service, storage facility, archives, or other computerized network or facility." The order further restrained the destruction or concealing by Defendants of such Works in their possession. It also required RTC to file a bond in

---

<sup>3</sup> On August 11, 1995, RTC sued Lerma in the United States District Court for the Eastern District of Virginia for copyright infringement and trade secret misappropriation in Religious Technology Center v. Lerma, No. 95-1107-A. On August 11, 1995, RTC obtained a restraining order and order of seizure and impoundment against Lerma. On August 22, 1995, RTC amended its complaint in that case, adding the Washington Post and two of its reporters as defendants. On August 30, 1995, that court denied RTC's motion seeking to enjoin the Post defendants from copying, disclosing, using, displaying, or reproducing Advanced Technology materials which it had obtained from the same public court file.



the amount of \$10,000 with the court forthwith. Judge Babcock set a hearing for a preliminary injunction before me on August 25, 1995 due to his being unavailable on that date.

Judge Babcock ordered Defendants to deliver the infringing articles within their possession and control into the custody of RTC's counsel. In this regard, he issued a writ of seizure and ordered a portion of the court file sealed until execution of the writ of seizure. Judge Babcock also granted RTC's motion for expedited discovery, ordering the depositions of all three Defendants to take place on August 23, 1995.

On August 22, 1995, extensive materials, including computer equipment, computer software and voluminous documents were seized from Defendants' premises pursuant to the writ. They were placed in the custody of RTC's counsel who proceeded to search for allegedly infringing materials.

On August 23, 1995, Defendants filed motions for a protective order, for temporary stay of expedited discovery and to require immediate delivery of confidential, proprietary, and privileged documents belonging to Defendants to their counsel of record, Thomas B. Kelley. RTC filed an opposition to the motion for a stay.

On August 24, 1995 I ordered an extension of the time for taking the depositions of Defendants and an extension of the restraining order until September 8, 1995 when the preliminary injunction hearing commenced. On August 25, 1995 I ordered Defendant's counsel or his representative be allowed to be present



while Plaintiff's counsel searched the impounded evidence. I further ordered any items to which Defendants' might claim privilege to be segregated from the materials impounded and handed over to the court.

The preliminary injunction hearing took place before me on September 8, 11, and 12, 1995. At the termination thereof, I issued an oral ruling. I denied RTC's request for a preliminary injunction and ordered RTC to return and restore to the Defendants all seized materials. I ordered Defendants to maintain the status quo as to the possession of all copyrighted materials at issue in the case and restricted each of Defendants to making only fair use of the materials. I reserved the right to clarify my oral order by way of a written opinion. This is that opinion.

### III. Preliminary Injunction.

I have authority to issue a preliminary injunction under Federal Rule of Civil Procedure 65. In addition, the Copyright Act specifically authorizes me to grant a preliminary injunction "on such terms as [I] may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502. The Colorado Uniform Trade Secrets Act similarly grants me the power to grant injunctive relief "to prevent or restrain actual or threatened misappropriation of a trade secret."

A preliminary injunction is an extraordinary remedy providing the potential for considerable harm yet its emergency nature does not afford the court the usual degree of careful consideration afforded by the deliberative processes of a trial. As a



consequence, the issuance of such an injunction, like the power of contempt, is one which is at best used sparingly, if at all.

Moreover, the very purpose of an injunction is to preserve the status quo ante. That is a rather elegant piece of Latin which means the last existing state of peaceable, noncontested conditions which preceded the pending controversy. I will not dwell on this, but it is helpful to observe that our legal forefathers were not fools; the complete phrase is status quo ante bellum which literally means "the state of things before the war began."

Given this purpose and the caution the law prescribes there are four basic considerations or findings which must be made before an injunction can issue. These same four factors likewise assist in determining the scope of the injunction and the conditions which attach to it.

A party seeking injunctive relief must establish:

- (1) it will suffer irreparable injury unless the injunction issues;
- (2) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party;
- (3) the injunction would not be adverse to the public interest; and
- (4) substantial likelihood that the movant will eventually prevail on the merits.

Walmer v. United States Dep't of Defense, 52 F.3d 851, 854 (10th Cir. 1995). The Tenth Circuit has adopted a modified interpretation of the fourth "likelihood of success" element. Id. "If the movant has satisfied the first three requirements for a preliminary injunction, the movant may establish likelihood of



success by showing questions going to the merits so serious, substantial, difficult and doubtful, as to make the issues ripe for litigation and deserving of more deliberative investigation." Id. This modified test applies, however, only where the first three requirements are satisfied.

Similarly, the less rigorous test for injunctive relief sometimes employed in copyright cases is only applicable where the plaintiff has made a prima facie showing of infringement. See, e.g., Financial Control Assoc's v. Equity Builders, Inc., 799 F. Supp. 1103, 1113 (D. Kan. 1992); 3 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 14.06[A] (1995).

The circumstances of this case warrant consideration and balancing of all four factors.

A. Substantial Likelihood of Success on the Merits.

1. Copyright Infringement Claim.

RTC contends it will succeed on the merits of its claims for copyright infringement because it owns a valid copyright and the copyrighted work was copied by Defendants without its authorization.

To prevail in a copyright infringement action, a plaintiff must prove (1) ownership of a valid copyright and (2) defendant copied, "protected components of the copyrighted material." Gates Rubber Co. v. Bando Chemical Indus., Ltd., 9 F.3d 823, 831 (10th Cir. 1993). If a certificate of registration in accordance with 17 U.S.C. § 410(c) has been obtained, there is a presumption in favor of the plaintiff that a valid copyright exists. Id. at 832. The



defendant then has the burden of overcoming this presumption. Id.

RTC claims it has certificates of registration for the Works, is their exclusive licensee and is entitled to protect them as if it were the original holder of the copyrights. At the outset of the preliminary injunction hearing, Defendants' counsel stipulated only for the purposes of this proceeding that the Works were originated by L. Ron Hubbard and that RTC has a valid title to the copyright in the Works.

Once a plaintiff shows it holds a valid copyright, it must then prove the defendant unlawfully appropriated some protected portions of the copyrighted work at issue. Id. This question breaks down into two separate inquiries:

- 1) [W]hether the defendant, as a factual matter, copied portions of the plaintiff's [writings]; and
- 2) whether, as a mixed issue of fact and law, those elements of the [writings] that have been copied are protected expression and of such importance to the copied work that the appropriation is actionable.

Id. In Gates Rubber the court noted that the inquiry does not end with a finding that the defendant copied the plaintiff's materials. "Liability for copyright infringement will only attach where protected elements of a copyrighted work are copied." Id. at 833.

The Copyright Act provides:

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S.C. § 102(b). The 1976 House Report noted copyright protection does not preclude others from using the ideas or



information revealed by the author's work, rather it refers only to the expression of the work adopted by the author. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 57 (1976), reprinted in 17 U.S.C.A § 102 app. at 17 (1976)).

RTC asserts Defendants themselves and through others directly copied the copyrighted Works. It maintains Defendants duplicated portions of the Advanced Technology materials onto a newsgroup<sup>4</sup> on the Internet and onto a Web site,<sup>5</sup> making them accessible to Internet subscribers. These subscribers could then download the works onto their own computers and have personal copies.

RTC additionally claims Defendants provided Arnaldo Lerma with copies of the materials at issue. Lerma ultimately posted these copies onto the Internet. RTC claims the act of providing Lerma with the copies constitutes contributory copyright infringement.

The evidence showed, however, that, apart from the Lerma posting, the only copying of the Works by Defendants was scanning them onto their computer and placing them in the private section of their library without making them available to the public over the Internet or otherwise. Copying of this sort by Defendants falls within the well established limitation on the exclusive right of copyright ownership recognized in the Copyright Act, 17 U.S.C § 107.

---

<sup>4</sup> A "newsgroup" is an electronic discussion group, serving as a bulletin board for users to post universally accessible messages, and to read and reply to those from others.

<sup>5</sup> World Wide Web is a network of computers on the Internet that maintains documents users can read and transfer with a number of programs.



Under this limitation, "the fair use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, teaching . . . scholarship, or research, is not an infringement of copyright." 17 U.S.C.A. § 107. The Copyright Act lists four factors for consideration in determining whether a particular use made of a work is fair use:

- (1) the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

Id.

"Fair use" is a factual determination. Harper & Row, Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 549 (1985). Each fact must be assessed in light of the total circumstances of the case and then a conclusion can be made as to whether the doctrine applies.

In Harper & Row, a magazine editor obtained a copy of a copyrighted manuscript which he knew he was not authorized to publish. In an attempt to get a "scoop" on the magazine that had the rights to publish the piece, he published excerpts from it. The Court found for the copyright holders, determining on a factor by factor basis that there was no valid fair use on the part of the defendant. the Court held the questioned publication's effect on the market is the "single most important element of fair use." Id.



at 566.

Even if, as RTC maintains, the Works have not been published, the concerns of the Court in Harper & Row do not apply here. Defendants' use of the materials was not with the intention of depriving the planned publication of its full impact. Further, no evidence was presented as to the effect of the Defendants' copying of the Works upon the potential market for them.<sup>6</sup>

The evidence showed the Works are esoteric in nature and are delivered to certain followers by advanced Scientologists known as "auditors" as part of an elaborate system of instruction. The only financial harm RTC would suffer would be if followers were to forsake the Church's didactic methodology in favor of self instruction through the Works copied by Defendants. There was no suggestion, let alone evidence, of this potential for financial loss to the Church.<sup>7</sup>

---

<sup>6</sup> This case is distinguishable from Bridge Publications, Inc. v. Vien, 827 F.Supp. 629 (S.D. Cal. 1993), appeal reinstated and transferred, 53 F.3d 344 (Fed. Cir. (Cal.) 1994). The Vien court held there was a copyright infringement and fair use did not apply. In that case, as here, an affiliate of the Church sued to enjoin the use of copyrighted works. There, however, the defendants were charging for classes that used the documents as part of their study. Id. at 632. The court found defendants used the materials for the same purposes as the holders of the copyright. Id. at 635. The court also found that there was a wholesale copying of the work and that this weighed heavily against fair use. Id. at 636. Finally, the Vien court found that because the defendant's use of the materials was substantially similar to that of the Church, there was an economic harm as demand for sale or distribution from the Church would diminish. Id.

<sup>7</sup> An argument that RTC may be harmed financially by Defendants' intended criticism of the Works through copying would not prevail. In a similar case, the Second Circuit ruled that economic harm from criticism is not actionable under copyright



The alleged copying by the Defendants was not of a commercial nature. Rather, it was made for non-profit purposes to advance understanding of issues concerning the Church which are the subject of ongoing public controversy.

RTC has not introduced the Works in their entirety into evidence to enable comparison of the amount and substantiality of the portion of the Works copied with each copyrighted work as a whole. Notably, however, even if a work is introduced in its entirety, the copying may nevertheless constitute fair use. See, e.g., Sony Corp. v. Universal City Studios, 464 U.S. 417, reh'g denied, 465 U.S. 1112 (1984); Rotbart v. O'Dwyer Co., 34 U.S.P.Q. 2d 1085 (S.D.N.Y. 1985).

Defendants maintain and the evidence does not refute that the Lerma postings to the Internet were made in the context of ongoing dialogue in the particular newsgroup to which they were posted. they form part of the topical debate concerning whether the Works are of substance or are perpetuated as part of systemic mind control.

No evidence was introduced showing a likelihood that a follower of the Church would consider the postings by Lerma as a market substitute for the Works. Nor did the evidence show that the postings were of a commercial nature or had any effect on the potential market for the works. As such, the postings may well be considered as having been made for the purposes of criticism,

---

laws. New Era Publications Int'l v. Carol Publishing Group, 904 F.2d 152, 160 (2nd Cir.), cert. denied, 498 U.S. 921 (1990).



comment or research falling within the fair use doctrine.

At this preliminary stage of proceedings, I find RTC has not shown a substantial likelihood of success on the merits of its copyright claim.

2. Misappropriation of Trade Secrets Claim.

RTC claims Defendants have misappropriated its trade secrets by acquiring, disclosing and using portions of the Works without authorization. Such claim is governed by the Colorado Uniform Trade Secrets Act and is not preempted by federal copyright statutes. See Gates Rubber, 9 F.3d at 846-47.

Colorado defines trade secrets as:

[T]he whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession, which is secret and of value. To be a "trade secret" the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Colo. Rev. Stat. § 7-74-102(4) (1986).

What constitutes a trade secret is a question of fact for the trial court. Gates Rubber, 9 F.3d at 848. Colorado courts apply a number of factors in determining whether a trade secret exists. They include:

- 1) the extent to which the information is known outside the business;
- 2) the extent to which it is known to those inside the business, i.e., by the employees;
- 3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;



- 4) the savings effected and the value to the holder in having the information as against competitors;
- 5) the amount of effort or money expended in obtaining and developing the information; and
- 6) the amount of time and expense it would take for others to acquire and duplicate the information.

Colorado Supply Co., Inc. v. Stewart, 797 P.2d 1303, 1306 (Colo.App. 1990), cert. denied, Oct. 7, 1991.

Despite RTC and the Church's elaborate and ardent measures to maintain the secrecy of the Works; they have come into the public domain by numerous means. RTC's assertion that the only way in which the materials have escaped its control was through two thefts in Denmark and England was not supported by the evidence. A former senior Scientology official testified to ongoing difficulties the Church incurred in keeping the Works secret, including members losing materials in their possession. The evidence also showed portions of the Works have been made available on the Internet through persons other than Lerma, with the potential for downloading by countless users.

The Works posted by Lerma were publicly available as part of an unsealed public court record in the Central District of California in Church of Scientology International v. Fishman, No. CV 91-6426 HLH (Tx), C.D. Cal. Wollersheim testified copies of the Works in his possession were sent to him by an attorney representing defendants in that case for whom he had provided consulting services.

In August 1995, reporters of the Washington Post obtained copies of the Works from the unsealed Fishman file. The



newspaper's publication of portions of the materials prompted RTC to request injunctive relief in Religious Technology Center v. Lerma, Civil Action No. 95-1107-A (E.D. Va.). On August 30, 1995, that court found the materials had escaped into the public domain and onto the Internet and that Lerma was not their only source on the Internet. Id., slip op. at 14-15 (E.D. Va. Aug. 30, 1995). The court concluded RTC could not establish for the purpose of the preliminary injunction motion that the documents were "not generally known" as required by the Virginia statute.

In the course of the hearing before me, RTC changed its position with regard to what materials constitute the purported trade secrets. At the outset, RTC maintained the entire Works were trade secrets. After evidence was heard indicating that the Works were in the public domain, RTC claimed that only portions of the Works, rather than the whole were secret. RTC's ambivalence and admission as to the non-secret nature of certain portions of the Works casts some doubt casts on the secret status of Works as a whole.

The evidence showed the Works are widely known outside of the Church through multiple sources. As such, they are not secret within the meaning of the Colorado statute and RTC has not shown a substantial likelihood of success on the merits of its trade secrets claim.

B. Irreparable harm.

I do not find RTC will suffer irreparable harm if the broad injunction sought is not granted. There has been no showing that



RTC has lost nor will lose competitive advantage through Defendants' fair use of the Works, nor that such use has been for commercial purpose.

RTC claims use of the materials impedes its right to exercise its religious belief that the materials must be kept secret. I am not persuaded that a denial of the injunction sought will deprive followers of the Church of their freedom to exercise their religious beliefs. RTC effectively requests that I advance its religion at the expense of Defendants' lawful rights to use the materials for the purposes of criticism and research. The United States Constitution, common law and the Copyright Act preclude me from doing so.

C. Balancing of Hardships.

The evidence does not reflect that the threatened injury to RTC outweighs the damage the broad injunction sought may cause the Defendants. Such relief would effectively pull the plug on Defendants' electronic library, infringe not only on their rights of criticism and research but be the death knell of FACTNET. Any threatened injury to RTC is outweighed by this potentially devastating hardship to Defendants.

D. Public Interest.

Public interest lies with the free exchange of dialogue on matters of public concern. The injunction sought would silence the Defendants as participants in an ongoing debate involving matters of significant public controversy. Relief of this kind does not serve the public interest.



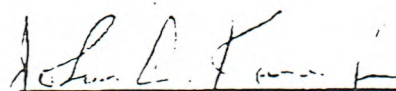
#### IV. Conclusion.

Having weighed all the relevant factors, I conclude RTC has not shown a substantial likelihood of success on the merits and the balance of harms weighs in favor of Defendants. Accordingly, IT IS ORDERED THAT Plaintiff's motion for preliminary injunction is DENIED;

IT IS FURTHER ORDERED THAT Plaintiff is to return and restore to Defendants immediately and at Plaintiff's expense all seized materials in the condition they were when taken and to the precise places from which they were taken;

IT IS FURTHER ORDERED THAT Defendants are to maintain the status quo as to their possession of all copyrighted materials at issue in this case and are restricted to making only fair use thereof. Defendants are prohibited from making any additional copies of the materials or transferring them in any manner or publicizing them other than in the context of fair use.

Dated this 15th day of September, 1995 at Denver, Colorado.

  
\_\_\_\_\_  
JOHN L. KANE, JR.  
U.S. SENIOR DISTRICT COURT JUDGE



SEP 15 10 11 AM RECEIVED & DEPOSITED  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
JAMES R. MANSPEAKER, CLERK  
U.S. Courthouse  
1929 Stout Street, C-145  
Denver, CO 80294  
(303) 844-3433

Date: September 15, 1995

Case No. 95-B-2143

The undersigned hereby certifies that on the above date a true and correct copy of the preceding **MEMORANDUM OPINION AND ORDER** signed by Judge John L. Kane, Jr. on **September 15, 1995** was mailed to the following:

Todd P. Blakely, Esq.  
Robert R. Brunelli, Esq.  
1700 Lincoln St. Suite 3500  
Denver, CO 80203

Judge Lewis Babcock

Helena K. Kobrin  
7629 Fulton Avenue  
North Hollywood, CA 91605

Thomas B. Kelley, Esq.  
Natalie Hanlon-Leh, Esq.  
370 17th Street, Suite 2500  
Denver, CO 80202-4004

Earle Coley, Esq.  
21 Custom House  
Boston, MA 02110

JAMES R. MANSPEAKER, CLERK

By: M. Hatcher  
Deputy Clerk